

SUPREME COURT OF ARKANSAS

In the Matter of the Adoption of A.M.C.; Paul Vick v. Dennis and
Lois Cecil

246 S.W.3d 426 (Ark. 2007) · No. No. 06-820 · Decided January 4, 2007

SUMMARY

The Arkansas Supreme Court affirmed an adoption decree granting Dennis Cecil's petition to adopt A.M.C. without Paul Vick's consent. The court held that the Indian Child Welfare Act did not apply because the Lower Muskogee Creek Tribe was not federally recognized, and that Vick's consent was unnecessary because he had failed significantly, without justifiable cause, to support the child for more than one year. The court also upheld the finding that the adoption was in A.M.C.'s best interest.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Annabelle Clinton Imber
JURISDICTION	Arkansas
DECIDED	January 4, 2007
DOCKET	No. 06-820
DISPOSITION	affirmed
PROCEDURAL POSTURE	Paul Vick appealed from a circuit-court decree granting Dennis Cecil's adoption of A.M.C. without Vick's consent.
STANDARD OF REVIEW	Issues of statutory construction are reviewed de novo. A finding that parental consent is unnecessary because of failure to support or communicate is reviewed for clear error. The best-interest determination is not reversed unless clearly against the preponderance of the evidence, with due regard for the circuit court's superior position to assess witness credibility.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; precedential.
PARTIES	Paul Vick v. Dennis Cecil, Lois Cecil

TOPICS

- adoption
- indian child welfare act
- tribal sovereignty
- statutory interpretation
- appellate procedure

PRACTICE AREAS

family law

adoption

indian child welfare act

tribal sovereignty

statutory interpretation

appellate procedure

QUESTIONS PRESENTED

1. Whether the Indian Child Welfare Act applied to the adoption proceeding involving A.M.C.
2. Whether Vick's consent to the adoption was unnecessary because he had significantly failed, without justifiable cause, to provide support for A.M.C. for at least one year.
3. Whether the adoption was in A.M.C.'s best interest.

HOLDINGS

1. The ICWA did not apply because A.M.C. was not an Indian child under the Act: although she was a registered member of the Lower Muskogee Creek Tribe, that tribe was not federally recognized, and there was no evidence that she was a member of or eligible for membership in a federally recognized tribe. Consequently, the heightened proof and expert-testimony requirements of 25 U.S.C. § 1912(f) did not apply.
2. Vick's consent was not required because he failed significantly, without justifiable cause, to provide support for A.M.C. for a period exceeding one year.
3. The circuit court did not clearly err in finding that adoption by Dennis and Lois was in A.M.C.'s best interest.

KEY QUOTATIONS

"We therefore hold that the circuit court correctly ruled that the ICWA does not apply to this adoption proceeding because A.M.C. is neither eligible for membership nor a member of a federally-recognized tribe."
(430)

"The parent must furnish the support and maintenance himself and the duty is a personal one, and he may not rely upon assurance that someone else is properly supporting and maintaining the child to avoid the impact of the statute's providing for adoption of his child without his consent because of his failure to support the child." (432)

FACTUAL BACKGROUND

A.M.C. was the natural daughter of Paul Vick and Lois Cecil, who had divorced, and Lois later married Dennis Cecil. Vick made thirteen child-support payments totaling \$1,140 between May 2002 and July 2004, but made no payments from October 18, 2002, through May 21, 2004, and continued making no documented payments after his release from prison. Dennis and Lois petitioned to adopt A.M.C. shortly after Vick's release from incarceration, while the Lower Muskogee Creek Tribe objected and asserted that Vick and A.M.C. were tribal members; however, the tribe was not federally recognized.

PROCEDURAL HISTORY

Paul and Lois Vick were divorced in Georgia, with joint custody awarded and Lois designated the primary physical custodian. After Dennis and Lois petitioned to adopt A.M.C., the Arkansas circuit court held an adoption hearing, considered whether the Indian Child Welfare Act applied, and entered a decree finding that the Act did not apply, Vick's consent was unnecessary because he had failed to provide support for more than one year, and the adoption was in the child's best interest. The Supreme Court of Arkansas affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Adoption of S.C.D., 358 Ark. 51, 186 S.W.3d 225 (2004)
- In re Adoption of Lybrand, 329 Ark. 163, 946 S.W.2d 946 (1997)
- In re Adoption of K.F.H. and K.F.H., 311 Ark. 416, 844 S.W.2d 343 (1993)
- In re A.D.L., 169 N.C. App. 701, 612 S.E.2d 639 (2005)
- State v. Klamath Tribe, 170 Or. App. 106, 11 P.3d 701 (2000)
- Mississippi Choctaw Indian Band v. Holyfield, 490 U.S. 30, 109 S. Ct. 1597, 104 L. Ed. 2d 29 (1989)
- Baker Refrigeration Sys., Inc. v. Weiss, 360 Ark. 388, 201 S.W.3d 900 (2005)
- Pender v. McKee, 266 Ark. 18, 582 S.W.2d 929 (1979)
- Linker-Flores v. Arkansas Department of Human Services, 364 Ark. 224, 217 S.W.3d 107 (2005)
- Malone v. Arkansas Department of Human Services, 71 Ark. App. 441, 30 S.W.3d 758 (2000)
- Dixon v. Dixon, 286 Ark. 128, 689 S.W.2d 556 (1985)